IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 3984 OF 2005

Seetaram Bhikaji Kad and Ors. ... Petitioners

Versus

District Collector, Pune and anr. ... Respondents

Mr. R.S. Apte with Mr. M.S. Lagu for Petitioner.

Mrs. S.S. Bhende, A.G.P. for Respondents.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 30TH SEPTEMBER, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioner has approached this court with a prayer by way of writ of mandamus to direct respondents to declare and conduct separately and independently, elections to Santoshnagar Gram Panchayat in accordance with the provisions of the Bombay Village Panchayat Act, 1958 along with election to Waki Budruk. There are also consequential reliefs.

. This Petition proceeds on the basis of the Writ Petition filed in this court being Writ Petition no. 1499 of 2004 which was disposed off by order dated 23.2.2004. In Para 6 of the judgement of this court, the court noted that the case of the

Petitioner is that pursuant to direction in W.P. No. 2717 of 2000 the State Government had taken a decision on 9.5.2001 declaring Santoshnagar as separate revenue village. The learned Division Bench then noted that inspite of the declaration no action has been taken for the purpose of constitution of Gram Panchayat considering that the provision of section 5 of the Gram Panchayat Act. The learned Division bench of this court proceeded on the basis that as there is revenue village, by virtue of section 5 of Bombay Village Panchayat Act there is a Panchayat and consequently directed that elections be held to that Panchayat.

. On behalf of Respondents, Mr. P.K. Deshmukh, Collector has filed affidavit. It is not necessary for us to deal at length with the contentions in the affidavit considering what is set out hereinafter.

. Section 5 of the Bombay Village Panchayat Act, 1958 no doubt sets out that in every village there shall be a panchayat. Under Article 243(g) a village is defined to mean a village and "a group of villages" means the village or as the case may be a group of villages specified in the notification issued. Rules framed contemplate that

whenever it is proposed to declare any local area to be village under Sub Section (1) of Section 4 of the Act, the Chief Executive Officer shall either himself or through any officer or servant of Zilla Praishad, cause an enquiry to be made to ascertain the population, local land revenue and extent of such local area and whether the said area comprises a revenue village or group of revenue village or part thereof.It is therefore, clear form the said rule that merely because there is revenue village, ipso facto does not mean that it becomes village under the provisions of the Village Panchayat Act. Further steps are required to be taken in terms of Rule 2 and 3 of the Bombay Village Panchayat (Declartion of Village) Enquiry Rules, 1859. These aspects of the matter it appears were not brought to the attention of the learned Division Bench at the time when the earlier petition was disposed of.

. An affidavit has been filed by Ms. Shilpa P. Rajpurkar, Under Secretary to Government of Maharashtra, Rural Development and Water Conservation Department, Mantaralya, Mumbai. It appears from the said affidavit that the procedure to constitute a village was in process. Ultimately, however, as set out in Paragraph 3 of the affidavit of Ms. Shilpa P. Rajpurkar the

Government considering the policy decision and standing orders for division and separation of Gram Panchayat and proposal submitted by the Divisional Commissioner, Pune Division was of the view that formation of separate Gram Panchayat of Santoshnagar cannot be considered by the Government at that stage. One such consideration was that as per resolution dated 12.2.2004, no Gram Panchayat can be separated within two years of its formation.

. Considering the above, and considering the division Bench Judgement of this Court, the respondents after completion of period of two years of elections being held to the village Panchayat, Waki Budruk to consider afresh the formation of village Panchayat of Santoshnagar in terms of the village Panchayat Act and Rules and Government notifications.

. By order of this court dated 18.7.2005 notice has been issued to Respondent Nos. 1 and 2 as to why proceedings under Contempt of Court Act should not be initiated against them. Respondent NO. 1 was present in the court yesterday. We had discharged his from further presence. Today affidavit has been filed on behalf of Respondent No. 1 tendering his unconditional apology and also

setting out other facts.

. Considering above, we think it proper to accept the unconditional apology offered by Respondent No. 1 and discharge the notice. In so far as Respondent No. 2 is concerned, it is constitutional Body for the purpose of holding elections and consequently the order issuing notice to Respondent No. 2 is recalled. With the above observations, petition stands disposed of accordingly.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)